



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,114	08/02/2005	Francois-Xavier Jacques Berthet	B45314	4557
23347 7590 02/18/2010 GLAXOSMITHKLINE CORPORATE INTELLECTUAL PROPERTY, MAI B482 FIVE MOORE DR., PO BOX 13398 RESEARCH TRIANGLE PARK, NC 27709-3398				
EXAMINER ARCHIE, NINA				
ART UNIT 1645		PAPER NUMBER		
NOTIFICATION DATE 02/18/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USCIPRTP@GSK.COM
LAURA.M.MCCULLEN@GSK.COM
JULIE.D.MCFALLS@GSK.COM

ADVISORY ACTION

1. The amendment filed on 1/20/2010, in reply to the final rejection has been considered and will be entered but is not deemed to place the application in condition for allowance. Applicant's remarks have been entered. Claims 1-55 are pending. Claims 9-12, and 20-44 are withdrawn from consideration. Claims 1-8, 13-19, 45-47, and 51-55 are under examination. Claims 48-50 and 56-71 are cancelled.

Double Patenting Rejection Maintained

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. The rejection of claims 1-8, 13-19, 45-47, 51-53, and 55 on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 3-7, 9-13, 17, 20, 22, 45, 52, 54-61, 95-96, and 98 of copending Application No. 10/523,117 is maintained for the reasons set forth in the previous office action.

Examiner notes that Applicants state the rejection be held in abeyance until the claims of one of the patent applications are found to be allowable.

Claim Rejections Maintained - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The rejection of claims 1-8, 13-19, 45-47, 51-55 under 35 U.S.C. 102(b) as being by Berthet et al WO/2001/009350 February 8, 2001 are maintained for the reasons set forth in the previous office action.

Applicant arguments:

Applicants arguments filed in response to the 35 U.S.C. 102(b), January 20, 2010 is carefully considered, but not found to be persuasive for the reasons below.

Applicants argue the reference of Berthet et al. does not explicitly disclose an immunogenic composition containing this particular pair of antigens. Berthet et al. teach a bleb preparation having one or more upregulated genes selected from a list of 21 antigens, including Hsf-like and TbpA and Tbp, thus, the reference teaches a genus of many possible antigen combinations, including 210 distinct combinations of two different antigens but does not list the particular combination of an Hsf-like antigen and a TbpA or TbpB antigen.

Examiner's Response to Applicant's Arguments:

In response to applicant's statement as set forth supra, the rejection is maintained for the reasons set forth in the previous office action on 8/20/2009. The claims recite open claim language (i.e. comprising) and are directed to a transferring binding protein (Tbp) or antigenic fragment thereof and an isolated Hsf like protein or antigenic fragment thereof in an immunogenic composition. Therefore the claims are not specifically limited to the particular pair/combination of an Hsf-like antigen and a TbpA or TbpB antigen. Berthet et al teach an immunogenic composition comprising a Tbp antigenic fragment thereof and an Hsf like antigenic fragment. Therefore the rejection is maintained.

Conclusions

4. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nina A. Archie whose telephone number is 571-272-9938. The examiner can normally be reached on Monday-Friday 8:30-5:00p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner supervisor, Robert Mondesi can be reached on 571-272-0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nina A Archie
Examiner
GAU 1645
REM 3B31

/Robert B Mondesi/
Supervisory Patent Examiner, Art Unit 1645